92-874

Supreme Court, U.S.
FILED
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OFFICE OF THE CLERK

No. _____

IN THE

Supreme Court of the United States

OCTOBER TERM, 1992

WENCHE SIEMER, The estate of PETER SIEMER Deceased, ADRIENNE GRAND-CLEMENT , The estate of MICHAEL MARC GRAND-CLEMENT , The Surviving Children and Parents of MARC GRAND-CLEMENT , deceased, MAYADA BAHRI HELWANI, The Estate of ALADDINE A. BAHRI, FADI A. BAHRI, DANA A. BAHRI, HASSAN A. BAHRI, YOUSSEF, A. BAHRI, The Surviving Children and Parents of ALADDINE A. BAHRI, Deceased,

Petitioners,

v.

The LEARJET ACQUISITION CORPORATION and LEARJET CORPORATION,

Respondents.

Petition For Writ Of Certiorari To
The United States Court Of Appeals
For The Fifth Circuit

PETITION FOR WRIT OF CERTIORARI

Clinard J. Hanby
Counsel for Petitioners
4300 Scotland
Houston, Texas 77007
(713) 868-1111
(713) 863-9934 (FAX)

Alpha Law Brief Co. • 6113 Aletha Lane • Houston, Texas 77081 (713)981-9000

QUESTIONS PRESENTED FOR REVIEW

1. Is in-state service state on a corporations's registered agent sufficient to establish personal jurisdiction over the corporation by the courts of the state?

2. Does this Court's holding in *Burnham v. Superior Ct.*, 495 U.S. 604 (1990) apply to corporations?

LIST OF ALL PARTIES

Petitioners:

Wenche Siemer

The Estate of Peter Siemer, Deceased

Adrienne Grand-Clement

The Estate of Michael Marc Grand-Clement

The Surviving Children and Parents of Marc Grand-Clement, Deceased

Mayada Bahri Helwani

The Estate of Aladdine A. Bahri

Fadi A. Bahri
Dana A. Bahri
Hassan A. Bahri
Youssef A. Bahri

The Surviving Children and Parents of Aladdine A. Bahri, Deceased

Respondents:

The Learjet Acquisition Corporation
Learjet Corporation

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NO. _____

IN THE
UNITED STATES SUPREME COURT
OCTOBER TERM, 1992

WENCHE SIEMER, THE ESTATE OF PETER SIEMER, DECEASED, ADRIENNE GRAND-CLEMENT, THE ESTATE OF MICHAEL MARC GRAND-CLEMENT, THE SURVIVING CHILDREN AND PARENTS OF MARC GRAND-CLEMENT, DECEASED, MAYADA BAHRI HELWANI, THE ESTATE OF ALADDINE A. BAHRI, FADI A. BAHRI, DANA A. BAHRI, HASSAN A. BAHRI, YOUSSEF A. BAHRI, THE SURVIVING CHILDREN AND PARENTS OF ALADDINE A. BAHRI, DECEASED,
Petitioner,

v.

THE LEARJET ACQUISITION CORPORATION AND LEARJET CORPORATION,
Respondent.

PETITION FOR WRIT OF CERTIORARI
to the United States Court of Appeals
for the Fifth Circuit

PETITION FOR WRIT OF CERTIORARI

REFERENCE TO THE OPINION OF THE COURTS BELOW

966 F.2d 179 (5th Cir. 1992)

STATEMENT OF JURISDICTION

The Fifth Circuit judgment was entered on July 17, 1992. Petitioner's motion for rehearing was denied on August 20, 1992. This court has jurisdiction under 28 U.S.C., Sec. 1254(1).

CONSTITUTIONAL PROVISION INVOLVED IN THE CASE

U.S. Const., Amend. XIV, Sec. 1: All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

STATEMENT OF THE CASE

Petitioners, who are all citizens or subjects of foreign states, sued Learjet Corporation, a Delaware Corporation with its principal place of business in Kansas, in the United

States District Court for the Eastern District of Texas.[1] Jurisdiction was based on diversity of citizenship under 28 U.S.C., Sec. 1332(a)(2).

Learjet had qualified to do business in Texas and appointed C.T. Corporation Systems of Dallas, Texas as its Registered Agent for service of process pursuant to Article 8.10, subdivision A of the Texas Business Corporations Act. Process was served on Learjet's Registered Agent in Dallas. Nevertheless, both the district court and the court of appeals have ruled that Texas lacked *in personam* jurisdiction over Learjet for purposes of this case.[2]

ARGUMENT

Burnham v. Superior Ct., 495 U.S. 604 (1990) involved personal service on an individual who was temporarily present in California. The issue was whether personal service on an individual on the territory of a state was sufficient, standing alone, for an assertion of *in personam* jurisdiction. Although this Court wrote four opinions and took two quite divergent approaches, all nine justices agreed that in-state personal service on an individual was sufficient basis for jurisdiction.

Justice Scalia's opinion noted specifically that corporations "have never fitted comfortably" into the jurisdictional regime based on presence in the territory and "express[ed] no views" on how his opinion related to corporations. 495 U.S. at 610, n.1. Here, Learjet

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1. Learjet Acquisition Corporation was also named as a defendant, but this entity is apparently defunct and need not be further noticed.

2. The district court also dismissed the case on four other grounds, but the court of appeals did not reach any of the other grounds.

designated an agent in Texas for the sole purpose of receiving process on behalf of the corporation. Regular service was accomplished on that agent. The fictitious corporate person can only act and exist through its agents. The distinction between asserting jurisdiction over Mr. Burnham who was present in California for three days and asserting jurisdiction over Learjet which had installed a permanent agent for process in Dallas is, at best, dubious. Nevertheless, the court of appeals ruled that *Burnham* was essentially irrelevant and held that in-state service on a designated corporate agent is an insufficient basis for *in personam* jurisdiction. This holding is in direct conflict with several state courts. *Allied-Signal, Inc. v. Purex Industries, Inc.*,242 N.J. Super. 362, 576 A.2d 942 (1990); *Walker v. Nationwide Ins. Co.*, 813 S.W. 2d 135 (Tenn. App. 1990); *See Also Rykoff-Sexton, Inc. v. American Appraisal Associates, Inc.*, 469 N.W. 2d 88 (Minn. 1991).

Regardless of whether the proper approach is historical "pedigree" as advocated by Justice Scalia or an "independent inquiry" into the fairness of a prevailing state rule as advocated by Justice Brennan, in-state service on a corporation's designated agent comports with due process. The majority of courts have long asserted jurisdiction over foreign corporations based on in-state service of process. Almost seventy years ago the Supreme Court of Tennessee stated the prevailing rule:

> [A] foreign corporation may be sued on a transitory cause of action in any state it is doing business and can be served with process regardless of whether the cause of action arose within or without the jurisdiction, and regardless of whether the plaintiff resides within or without the state.

Allwood and Green v. Buffalo Hardware Lumber Co., 152 Tenn. 544, 548,279 S. W. 795, 797 (1925). Similarly, the Minnesota Supreme Court long ago held that foreign corporations were subject to suit wherever they could be reached for service of process, regardless of where the cause of action arose. *Erving v. Chicago & N.W. Ry. Co.*, 171 Minn. 87, 214 N.W. 12 (1927); *See Generally* 36 Am. Jur. 2d, *Foreign Corporations*, Sec. 527 (1968) ("[I]f an authorized representative of a foreign corporation is physically present in the state of the forum and is there engaged in activities appropriate to accepting service or receiving notice on its behalf, the corporation may be subjected to the jurisdiction of the courts of such state through service of process upon such representative."); *Knowlton v. Allied Van Lines*, 900 F.2d 1196, 1199 (8th Cir. 1990) (Appointment of an agent for service is "a traditionally recognized and well-accepted species of general consent" making "resort to minimum--contacts or due-process analysis to justify the jurisdiction . . . unnecessary.")

This Court, too, long ago recognized that in-state service of process on a designated agent was sufficient to establish jurisdiction over a foreign corporation. *Lafayette Ins. Co. v. French*, 18 How. (59 U.S.) 404 (1855); *See Also St. Clair v. Cox*, 106 U.S. 350, 353 (1882) ("The doctrine of that case [*Pennoyer v. Neff*, 95 U.S. 714 (1878)] applies, in all its force, to personal judgments of state courts against foreign corporations. The courts rendering them must have acquired jurisdiction over the party by personal service or voluntary appearance, whether the party be a corporation or a natural person. There is only this difference: a corporation being an artificial being can act only through agents, and only through them can be reached, and process must, therefore, be served upon them.") Thus, under the historical approach taken by Justice Scalia, there is no due process impediment to the exercise of jurisdiction over a foreign

corporation based on in-state service on a registered agent.

An analysis under Justice Brennan's approach leads inevitably to the same conclusion. Each of the factors relied upon by Justice Brennan is present where a corporation has qualified to do business and designated a registered agent. The corporation thereby enjoys the benefits of state police, fire, and other services. Its agents are free to travel on the state's roads and waterways. The corporation is entitled to access to the state's courts, and the same incongruity would arise if the corporation were to have "the full benefit of the power of the forum State's courts as a plaintiff while retaining immunity from their authority as a defendant." 495 U.S. at 638. The burden on a substantial corporation such as Learjet in defending a lawsuit outside of its residence are much less than those facing an individual such as Mr. Burnham, and the modern procedural devices mentioned by Justice Brennan are equally available.

Perhaps the most important factor in Justice Brennan's analysis is whether the defendant has notice that it is subject to suit in the forum. In the case of in-state service on a transient individual, Justice Brennan states that this notice is provided by the long tradition of exercising such jurisdiction. This argument is equally valid in the present case. Furthermore, the notice that the defendant is subject to suit is even more clear where service is accomplished on a designated registered agent. The sole function of such an agent is to receive and transmit process. Such agents are typically appointed by the direct action of the corporate Board of Directors. Clearly, the corporation expects to be haled into court in the forum; otherwise, there would be no need for the registered agent.

CONCLUSION

Petitioners respectfully urge the Court to grant certiorari in this case.

Respectfully submitted,

CLINARD J. HANBY
SBN 08880500
4300 Scotland
Houston, Texas 77007
(713) 868-1111
(713) 863-9934 [fax]

APPENDIX A

Opinion of the Court of Appeals

WENCHE SIEMER v. LEARJET ACQUISITION CORP.

WENCHE SIEMER, etc.,et al.,
Plaintiffs-Appellants
v.
The LEARJET ACQUISITION CORP.,
et al., Defendants-Appellees.

Mayade Bahri HELWANI. etc.,et
al., Plaintiffs-Appellants,
v.
The LEARJET ACQUISITION CORP.,
et al., Defendants-Appellees.

No. 91-4745.

United States Court of Appeals,
Fifth Circuit.

July 17, 1992.

Appeals from the United States District Court for the Eastern District of Texas.

Before HIGGINBOTHAM and DUHE, Circuit Judges, and HUNTER[1], District Judge.

EDWIN F. HUNTER, Jr., District Judge:

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1. District Judge of the Western District of Louisiana, sitting by designation.

Plaintiffs are the survivors of the co-pilot (Michael M. Grandclement) and of two of the passengers (Peter I. Simer and Aladdine H. Bahri[2]) on board Learjet N-711AF, which crashed on August 11, 1979 while en route from Athena, Greece to Jeddah, Saudi Arabia. The aircraft disappeared while traversing Egyptian airspace. The wreckage of the aircraft was discovered nearly eight (8) years later in the Egyptian desert.

In sum, plaintiffs' decedents disappeared from the face of the earth on August 11, 1979, when the plane they were flying disappeared over Egypt. Less than two years later, all of plaintiffs filed wrongful death actions in New York asserting that their decedents were dead. All of these cases were ultimately dismissed on *forum non conveniens* grounds.[3] Learjet was a defendant in one of plaintiffs' suits. Plaintiffs did not appeal.

Ten years later and eight years after being dismissed in New York, plaintiffs filed this second set of wrongful death actions in the United States District Court for the Eastern District of Texas. The district court granted Learjet's Motion to Dismiss on all grounds asserted: lack of *in personam* jurisdiction; improper venue; *forum non conveniens*; *collateral estoppel;* and *limitations*. Because we hold that the district court correctly ruled that it had no jurisdiction over the corporation in the cause of action asserted, we do not reach defendant's other lines of defense.

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2. Also referred as Aladin Bahri and Alleaddeen Hassan-al Bahri.

3. *See* Opinions of October 6, 1981, and May 12, 1983; *see also* Orders of Judgment of October 7, 1981 and May 19, 1983. A fifth action, filed by the survivor of Teresa Drake, another passenger on board Learjet N-711AF, was also dismissed by the May 1983 order.

THE CONSTITUTIONAL REQUIREMENTS OF "DUE PROCESS"

Plaintiffs are all residents of Greece or other European countries. Decedents were all residents of Greece. The aircraft was permanently based, maintained and serviced in Greece. It was operated by a Greek company. It was not designed or manufactured in Texas. It was never owned by a Texas resident. It had never been repaired or serviced in Texas. Learjet is a Delaware corporation with its principal place of business in Kansas, where it designed, manufactured and sold its products. Plaintiffs urge us to hold, quite simply, that in state service on a designated corporate agent without more, satisfies the requirements of due process. This Court has never so held and we decline to do so now.

The extent of Learjet's contacts with Texas from the date it began operations to February 26, 1989, the date plaintiffs filed this suit, are revealed in the record. They had not had an employee, an officer or director, an interest in real property, a deposit in any financial institution, or a facility or office located within the state. All sales were made from products warehoused in Kansas or Arizona. Only slightly over one percent (1%) of Learjet's sales consisting of spare parts went to buyers with Texas addresses. Learjet does hold a certificate from Texas giving it the right to do business in Texas. It does have an agent for process in Dallas, Texas. A wholly-owned, but separately operated, subsidiary transacts business in San Antonio, pursuant to a government contract. Advertisements have been placed in national journals that are distributed in Texas (as well as all other states), and Learjet has, on occasion, mailed information to prospective customers who happen to be located in Texas.

The fact that service is proper does not resolve the question as to "whether [the] plaintiff has demonstrated a sufficient basis for th[e] court's exercise of personal jurisdiction." *Applewhite v. Metro Aviation, Inc.*, 875 F.2d 491, 494 (5th Cir. 1989).

Whether jurisdiction in the sense of due process exists depends upon concepts of "fairness" and "convenience" and not upon mere compliance with procedural requirements of notice, nor even corporate "presence" within the state. *International Shoe Co. v. Washington*, 326 U.S. 310, 66 S.Ct. 154, 90 L.Ed. 95 (1945).

[1] Because plaintiffs' causes of action, as alleged, in no way arose out of Learjet's contacts with Texas, plaintiffs had to show, in order to sustain jurisdiction, that Texas acquired general jurisdiction over Learjet. The leading Supreme Court case on general jurisdiction if *Helicopteros Nacionales de Colombia, S.A. v. Hall*, 466 U.S. 408, 104 S.Ct. 1868, 80 L.Ed.2d 404 (1984). There, the Texas Supreme Court determined that a foreign corporation could be sued in Texas in a suit arising out of a helicopter crash in Peru. The United States Supreme Court reversed. The reversal was premised upon a finding that the corporations's contacts were insufficient to establish general jurisdiction. The facts closely resemble those here. Neither plaintiffs nor decedents were or had been domiciled in Texas. The harm suffered did not occur in Texas. The alleged misconduct did not take place in Texas. The corporation had substantial contacts with Texas, *id.* at 410-11, 104 S.Ct. at 1869-71, but the Supreme Court of the United States held those contacts were insufficient to satisfy the requirements of the due process clause of the Fourteenth Amendment. *Id.* at 418-19, 104 S.Ct. at 1874-75.

[2,3] The facts in *Bearry v. Beech Aircraft Corp.*, 818 F.2d 370 (5th Cir. 1987). provide a clear precedent for the resolution of this jurisdictional dispute. There, this Court found that general jurisdiction did not exist in Texas over another Kansas aircraft manufacturer, Beech Aircraft. The only significant factual differences between *Bearry* and this case are: (1) instead of being centered around sister states, Louisiana and Mississippi, the present case centers around foreign nations, Greece and Egypt; (2) Learjet has substantially *less* commerce involving Texas than the *Bearry* defendants had involving their respective forums; and (3) Learjet had appointed an agent for service of process in Texas. The first two items clearly reflect a much more tenuous jurisdictional connection to Texas by Learjet. While the last item, being qualified to do business, may on its face appear to be significant, it "is of no special weight" in evaluating general personal jurisdiction. *Ratliff v. Cooper Laboratories, Inc.*, 444 F.2d 745, 748 (4th Cir.), *cert. denied*, 404 U.S. 948, 92 S.Ct. 271, 30 L.Ed.2d 265 (1971); *accord Jones v. Family Inns, Inc.*[4], 1989 WESTLAW 57130, Civ.A. No. 89-0190 (E.D.La. May 23, 1989); *In re Mid-Atlantic Toyota Antitrust Litig.*, 525 F.Supp. 1265, 1278 (D.Md. 1981). Plaintiffs' cite no case and this Court has found none that supports the proposition that the appointment of an agent for process and the registration to do business within the state, without more, suffices to satisfy the criteria for the exercise of general jurisdiction.

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4. "As the defendant's sole contact with the State of Louisiana is an appointed agent for service of process, the defendant's contact does not satisfy the minimum contacts requirement of *International Shoe* and therefore maintenance of this suit in this jurisdiction would offend the traditional notions of fair play and substantial justice." *Jones*, 1989 WESTLAW at 57130.

The facts in *Ratliff* are remarkably similar to those here and its holding--that no general jurisdiction existed--if followed would be dispositive. The defendant had no office, bank account, or warehouse in South Carolina. *Ratliff*, 444 F.2d at 748. It owned no real or personal property there. It did not advertise there except through national journals. Just as Learjet had done in Texas, however, the defendant drug company had qualified to do business in South Carolina and had appointed an agent for service of process in the state. Moreover, the *Ratliff* defendant had maintained five "detail men" who lived in and promoted its products through personal contacts with doctors and drugstores throughout the forum state. Nonetheless, even the physical presence of this sales operation in South Carolina failed to tip the scale and subject the defendant to personal jurisdiction.

> "We think the application to do business and the appointment of an agent for service to fulfill a state law requirement is of no special weight in the present context. Applying for the privilege of doing business is one thing, but the actual exercise of that privilege is quite another."

Id. at 748.

Plaintiffs tout *Burnham v. Superior Ct.*, 495 U.S. 604, 110 S.Ct. 2105, 109 L.Ed.2d 631 (1990), as being dispositive of the jurisdictional issue. This is puzzling. *Burnham* did not involve a corporation and did not decide any jurisdictional issue pertaining to corporations.

Burnham, a New Jersey resident, during a visit to California to visit his children was served with a court summons and his estranged wife's divorce petition. She was a resident of California. The courts of that state rejected Burnham's contention that the Due Process Clause of the

Fourteenth Amendment prohibited courts of that state from asserting personal jurisdiction over him. The Supreme Court unanimously affirmed and agreed that the rule allowing jurisdiction to be obtained over a non-resident by personal service in the forum state could not be held violative of due process under the circumstances of that case.

Justice SCALIA (with three Justices concurring) reasoned that jurisdiction based on physical presence, alone, constitutes due process because it is a continuing tradition of our legal system. Justice BRENNAN (with three Judges concurring), applied a more flexible approach. He had in essence this to say: Historical pedigree, although important, is not the only factor to be taken into account in establishing whether a jurisdictional rule satisfies due process, and that an independent inquiry into the fairness of the prevailing in-State service rule must be undertaken.

Justice WHITE wrote separately to the effect that there had been no showing here that the rule allowing service was so lacking in common sense that it should be held violative of Due Process. Justice STEVENS, in a special concurrence, make some interesting observations.[5]

Contrary to plaintiffs' assertion, nothing in either plurality opinion suggests that service on a corporation's registered agent "automatically subjects the corporation to jurisdiction." *Burnham*, to the extent it provides any guidance, reinforces Learjet's position. Justice SCALIA

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5. "For me, it is sufficient to note that the historical evidence and consensus identified by Justice SCALIA, the considerations of fairness identified by Justice BRENNAN, and the common sense displayed by Justice WHITE, all combine to demonstrate that this is, indeed a very easy case." Then he noted: "Perhaps the adage about hard cases making bad law should be revised to cover easy cases." *Burnham*, 110 S.Ct. at 2126.

noted "the continuous and systematic contact rule applied only to corporations, which have never fitted comfortably in a jurisdictional regime based primarily upon de facto power over the defendant's person." *Id.*, 110 S.Ct. at 2110 n.1. The second plurality's opinion reaffirms that all assertions of personal jurisdiction must satisfy the contacts and fairness requirements enunciated in *International Shoe*. *Id.* at 2120-22.

To assert, as plaintiffs do, that mere service on a corporate agent automatically confers *general jurisdiction* displays a fundamental misconception of corporate jurisdictional principles. This concept is directly contrary to the historical rationale of *International Shoe* and subsequent Supreme Court decisions. *See International Shoe*, 326 U.S. at 316-19, 66 S.Ct. at 158-60; *Perkins v. Benguet Consolidated Mining Co.*, 342 U.S. 437, 444-48, 72 S.Ct. 413, 417-19, 96 L.Ed. 485 (1952); *see also Ratliff*, 444 F.2d at 748. In *Perkins*, the Supreme Court upheld general jurisdiction over a Philippine corporation that had been served in Ohio by serving its president while he was conducting the corporation's business in the state, but only after a thorough "minimum contacts" and fairness analysis. *Perkins*, 342 U.S. at 445-48, 72 S.Ct. at 418-20. The Court refused to find jurisdiction based solely upon service on the president, and went on to state that the fact that a corporation's activities caused it to have a registered agent in the forum state was "helpful but not a conclusive test" in the jurisdictional equation. *Id.* at 445, 72 S.Ct. at 418. Indeed, the *Ratliff* court held that a corporation's qualification to do business in the forum state and service on its registered agent in the state "is of no special weight in evaluating general personal jurisdiction." *Ratliff*, 444 F.2d at 748. The *Ratliff* defendant, who had not only qualified to do business and appointed an agent for service of process, but maintained five salesmen in the forum, clearly presents a much greater

presence than any Learjet might have had in Texas. A registered agent, from any conceivable perspective, hardly amounts to "the general business presence" of a corporation so as to sustain an assertion of general jurisdiction. *Bearry*, 818 F.2d at 375; *cf. Smith v. Lloyd's of London*, 568 F.2d 1115, 1118 & n. 7 (5th Cir. 1978) (interpreting a Georgia registration statute for insurance companies as requiring more than the mere presence of agents in Georgia to subject a corporation to personal jurisdiction and questioning the constitutionality of a broader interpretation).

Not only does the mere act of registering an agent not create Learjet's general business presence in Texas, it also does not act as consent to be hauled into Texas courts on any dispute with any party anywhere concerning any matter. The Texas Business Corporation Act provides that service on a registered foreign corporation may be affected by serving its president, any vice president, or the registered agent of the corporation. (Tex. Bus. Corp. Act Ann. art. 8.10(A)). No Texas state court decision has held that this provision acts as a consent to jurisdiction over a corporation in a case such as ours--that is where plaintiffs are non-residents and the defendant is not conducting substantial activity within the state. Learjet does not contest the "potential" jurisdiction of Texas courts. They do assert and we agree that the appointment of an agent for process has not been a waiver of its right to due process protection.

The Eighth Circuit, construing an Arkansas registration statute even less explicit as to its limited scope, found that the statute could be read, "at its broadest, to cover only causes of action arising out of . . . transactions in Arkansas." *Pearrow v. National Life & Accident Ins. Co.*, 703 F.2d 1067, 1069 (8th Cir. 1983) (citations omitted). In the First Circuit, it was noted that any other construction of the Maine registration statute would be unreasonable.

Sandstrom v. Chemlawn Corp., 727 F.Supp. 676, 681 (D.Me.1989), *aff'd*, 904 F.2d 83 (1st Cir. 1990).

In short, a foreign corporation that properly complies with the Texas registration statute only consents to personal jurisdiction where such jurisdiction is constitutionally permissible. Due process, as this Court often has said, is a flexible concept that varies with the particular situation. Our due process jurisprudence has evolved substantially since the seminal case of *International Shoe*, but under any analysis, it would be violative of due process to require Learjet to defend this suit in Texas. The district court was eminently correct in so holding.[6]

We affirm the district court's dismissal of this case.

AFFIRMED.

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6. The circumstances are reminiscent of *Dalton v. R. & W. Marine, Inc.*, 897 F.2d 1359 (5th Cir. 1990). There this court concluded: ". . ., aside from its role as the forum state, Louisiana has no interest in this litigation. It appears that the attorneys are the only participants with any ties to the forum." *Id.* at 1363.

APPENDIX B

Order, Findings of Fact and Conclusions of Law of the District Court

EOD 5/14/91

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IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF TEXAS
BEAUMONT DIVISION

WENCHE SIEMER, SURVIVING SPOUSE OF PETER SIEMER, DECEASED, INDIVIDUALLY, AND AS REPRESENTATIVE OF THE ESTATE OF PETER SIEMER, DECEASED, AND FOR THE BENEFIT OF THE SURVIVING CHILDREN AND PARENTS OF PETER SIEMER, DECEASED, AND ADRIENNE GRANDCLEMENT, SURVIVING SPOUSE OF MICHAEL MARC GRANDCLEMENT, DECEASED, INDIVIDUALLY, AND AS REPRESENTATIVE OF THE ESTATE OF MICHAEL MARC GRANDCLEMENT AND FOR THE BENEFIT OF THE SURVIVING CHILDREN AND PARENTS OF MICHAEL MARC GRANDCLEMENT	§	
V.	§	
THE LEARJET ACQUISITION CORPORATION AND LEARJET CORPORATION	§	
	§	NO. B-8900155CA
	§	Consolidated
	§	Under Case
	§	NO. B-89-00154CA
	§	JURY

ORDER GRANTING LEARJET CORPORATIONS'S MOTION TO DISMISS

Having come on to be heard the Motion to Dismiss filed by Learjet Corporation, a defendant, the Court, having considered the evidence, pleadings, and arguments presented by all parties, hereby GRANTS said Motion.

The Court finds that:

1. Learjet Corporation is not subject to personal jurisdiction in this Court;

2. Venue in this action is not proper in the Eastern District of Texas.

Civ. Order 525K
Vol. 229 Page 29

3. This action should be dismissed on the grounds of *forum non conveniens*;

4. This action should be dismissed on the grounds of collateral estoppel; and

5. Plaintiffs' claims are barred by limitations.

It is therefore ORDERED that this cause be dismissed with prejudice to Plaintiffs' right to refile or reassert any claim herein or any part thereof.

It is further ORDERED that the costs of court are taxed against the party incurring same.

It is further ORDERED that all relief not granted herein is DENIED.

DATED this 13 day of May, 1991.

/s/ illegible
UNITED STATES DISTRICT JUDGE

GB85/10

APPENDIX C

Order on Rehearing

U.S. COURT OF APPEALS
FILED
AUG 20 1992
GILBERT F. GANUCHEAU
CLERK

IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

NO. 91-4745

WENCHE SIEMER, Etc., ET AL.,
Plaintiffs-Appellants,

versus

THE LEARJET ACQUISITION CORPO., ET AL.,
Defendants-Appellees.

* * * * * * * * * * * * * * * * * *

MAYADE BAHRI HELWANI, Etc., ET AL.,
Plaintiffs-Appellants

versus

THE LEAR JET ACQUISITION CORP., ET AL.,
Defendants-Appellees.

Appeal from the United States District Court for the
Eastern District of Texas

ON PETITION FOR REHEARING
(August 20, 1992)

Before HIGGINBOTHAN and DUHE', Circuit Judges, and HUNTER*, District Judge.
PER CURIAM:

IT IS ORDERED that the petition for rehearing filed in the above entitled and numbered cause be and the same is hereby denied,

ENTERED FOR THE COURT;

/s/ illegible
United States Circuit Judge

CLERK'S NOTE:
SEE FRAP AND LOCAL RULES 41 FOR STAY OF MANDATE.
REHG-4

*District Judge of the Western District of Louisiana, sitting by designation.

(2)

No. 92-874

Supreme Court, U.S.
FILED
DEC 17 1992
OFFICE OF THE CLERK

IN THE

Supreme Court of the United States

OCTOBER TERM, 1992

WENCHE SIEMER, The Estate of PETER SIEMER, Deceased, ADRIENNE GRAND-CLEMENT, The Estate of MICHAEL MARC GRAND-CLEMENT, The Surviving Children and Parents of MICHAEL MARC GRAND-CLEMENT, Deceased, MAYADA BAHRI HELWANI, The Estate of ALADDINE A. BAHRI, FADI A. BAHRI, DANA A. BAHRI, HASSAN A. BAHRI, YOUSSEF A. BAHRI, The Surviving Children and Parents of ALADDINE A. BAHRI, Deceased,

Petitioners,

v.

The LEARJET ACQUISITION CORPORATION and LEARJET CORPORATION,

Respondents.

On Petition For Writ Of Certiorari To The United States Court Of Appeals For The Fifth Circuit

RESPONDENT'S BRIEF IN OPPOSITION TO PETITION FOR WRIT OF CERTIORARI

GERALD L. BRACHT
MAYOR, DAY, CALDWELL & KEETON, L.L.P.
700 Louisiana, Suite 1900
Houston, Texas 77002-2778
(713) 225-7000

HUGH C. GRIFFIN
Counsel of Record
DAVID J. ADAMS
REGINA KWAN PETERSON
LORD, BISSELL & BROOK
115 South LaSalle Street
Chicago, Illinois 60603
(312) 443-0700

Attorneys for Respondent Learjet Corporation

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No. 92-874

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STATEMENT OF THE CASE

Respondent Learjet Corporation ("Learjet") is a Delaware corporation with its principal place of business in Kansas. Petitioners, who are citizens and residents of various European and African countries, are the survivors of three persons (also Greek or African citizens) who were on board a Learjet aircraft that crashed in Egypt in 1979. The aircraft was permanently based, maintained, and serviced in Greece and was operated by a Greek company. At the time of the accident, the aircraft was traveling to Saudi Arabia from Greece. It is conceded that the cause of action has no connection to the State of Texas whatsoever. In the early 1980s, Petitioners filed actions in the United States District Court for the Southern District of New York, all of which were ultimately dismissed on *forum non conveniens* grounds.

In 1989, this case was filed in the United States District Court for the Eastern District of Texas, Beaumont Division. On May 14, 1991, the District Court dismissed plaintiffs' actions on five separate grounds: 1) lack of *in personam* jurisdiction; 2) improper venue; 3) *forum non conveniens*; 4) collateral estoppel; and 5) expiration of the statute of limitations.

On July 17, 1992, the United States Court of Appeals for the Fifth Circuit affirmed on the ground that the Texas District Court lacked *in personam* jurisdiction over Learjet. Accordingly, the Circuit Court did not reach any of the other grounds for the District Court's dismissal order. *Wenche Siemer v. Learjet Acquisition Corp.*, 966 F.2d 179, 180 (5th Cir. 1992). Petitioners' Motion for Rehearing was denied on August 20, 1992.

On November 17, 1992, Petitioners filed this Petition for Writ of Certiorari to the United States Court of Appeals for the Fifth Circuit. Respondent respectfully requests that the Petition for Writ of Certiorari be denied.

REASONS WHY THE WRIT SHOULD BE DENIED

Petitioners do not contest that under traditional due process analysis, as set forth by this Court in *Perkins v. Benguet Consolidated Mining Co.*, 342 U.S. 437 (1952) and *Helicopteros Nacionales de Colombia v. Hall*, 466 U.S. 408 (1984), Learjet did not have the "continuous and systematic" Texas business activities necessary to subject it to general jurisdiction in Texas for causes of action arising outside of Texas. Rather, Petitioners contend that the mere fact that Learjet had complied with the statutory registration requirements for foreign corporations under the Texas Business Corporation Act (*see* Art. 8.01, et seq.), by appointing a registered agent, permits Learjet to be sued in Texas in *all* cases, including causes of action like these that arise outside of Texas and outside of the United States. The Fifth Circuit Court of Appeals unanimously rejected Petitioners' assertion since:

1) It is inconsistent with the language of the section of the Texas Business Corporation Act upon which Petitioners relied;

2) It is contrary to the due process limitations this Court set forth in *Perkins* and *Helicopteros* regarding the type of continuous and systematic forum state business activities that a foreign corporation must engage in before it can be subjected to causes of action arising outside of the forum; and

3) It is not supported by this Court's decision in *Burnham v. Superior Court*, 495 U.S. 604 (1990), which did not involve any corporate defendant and expressly recognized the requirement of "continuous and systematic contacts" in cases involving corporate defendants.

There is no reason or need for this Court to review a Circuit Court of Appeals decision that adheres to the express language of the particular state statute involved and that is in all respects consistent with this Court's prior decisions establishing the due process requirements for asserting general jurisdiction over a foreign corporation.

1. The Texas Business Corporation Act Upon Which Petitioners Rely Is Contrary To Their Position.

Significantly, the Petition for Writ of Certiorari never quotes from the provisions of the Texas Business Corporation Act ("the Act") upon which Petitioners rely. This is not surprising because the wording of that statute undercuts Petitioners' premise that foreign corporations, by complying with the Act's registration requirements, waive their right to due process protection and consent to be sued in Texas for any and all causes of action arising anywhere in the world. Article 8.02(A) of the Act provides no such thing. On the contrary, the statute reads as follows:

> Art. 8.02. Powers of Foreign Corporation
>
> A. A foreign corporation which shall have received a certificate of authority under this Act shall, until its certificate of authority shall have been revoked in accordance with the provisions of this Act or until a certificate of withdrawal shall have been issued by the Secretary of State as provided in this Act, enjoy the same, but no greater, rights and privileges as a domestic corporation organized for the purposes set forth in the application pursuant to which such

> certificate of authority is issued; and, *as to all matters affecting the transaction of intrastate business* in this State, it and its officers and directors shall be subject to the same duties, restrictions, penalties, and liabilities now or hereafter imposed upon a domestic corporation of like character and its officers and directors.

TEX. BUS. CORP. ACT ANN. art. 8.02(A) (Vernon Supp. 1991) (emphasis added).

Thus, the Texas statute itself does not purport to subject foreign corporations to the same burdens as domestic corporations as to all matters—only "as to all matters affecting the transaction of *intrastate business*." The matter in this case does not affect or involve intrastate business; rather, it arises out of an air crash in Egypt that had no connection with Texas or the transaction of business in Texas whatsoever.

2. The Court of Appeals' Decision Is Consistent With Decisions In Other Circuits That Have Addressed The Effect Of Registration Statutes On The Jurisdictional Analysis.

Indeed, even in cases involving state registration statutes not explicitly limited to "the transaction of intrastate business", as the Texas statute is, the Circuit Courts have held that compliance with such statutes does not subject a foreign corporation to *in personam* general jurisdiction for out-of-state causes of action. *Ratliff v. Cooper Laboratories, Inc.*, 444 F.2d 745 (4th Cir. 1971) (holding that a foreign corporation could not be sued on a cause of action arising outside the forum merely because it applied for the privilege of doing business in the forum state and appointed an agent for service of process: "Applying for the privilege of doing business is one thing, but the actual

exercise of that privilege is quite another."); *Pearrow v. National Life & Accident Ins. Co.*, 703 F.2d 1067 (8th Cir. 1983) (reasoning that Arkansas could not exercise general jurisdiction over a foreign corporate insurance company for an action arising in Tennessee simply because the insurer had complied with the Arkansas statute requiring that the corporation appoint the Arkansas Commissioner of Insurance as its agent for service of process because "that section can be read, at its broadest, to cover only causes of action arising out of the insurance business, or other transactions in Arkansas."); *Sandstrom v. ChemLawn Corp.*, 904 F.2d 83 (1st Cir. 1990) (finding that ChemLawn's appointment of an agent for service of process in Maine in anticipation of doing business in that state at a future time did not subject ChemLawn to Maine jurisdiction for a cause of action arising in Connecticut).

3. The Court Of Appeals' Analysis Is Also Consistent With This Court's Prior Jurisdictional Analysis In General Jurisdiction Cases.

The Fifth Circuit Court of Appeals' rejection of Petitioners' argument is also mandated by and consistent with this Court's leading general jurisdiction cases. *See, e.g., Helicopteros Nacionales de Colombia v. Hall*, 466 U.S. 408 (1984); *Perkins v. Benguet Consolidated Mining Co.*, 342 U.S. 437 (1952). In both of these cases, this Court reiterated that a foreign corporation's activities in the forum state must rise to the level of "continuous and systematic" business activity before that foreign corporation can be subjected to general jurisdiction in the forum for actions arising outside the forum. Absent such continuous and systematic business activities, the assertion of *in personam* jurisdiction over a foreign corporation for a cause of action arising outside the forum offends the traditional notions of

fair play and due process set forth in *International Shoe Co. v. Washington*, 326 U.S. 310 (1945). *Helicopteros*, 466 U.S. at 416-17. Indeed, in *Perkins*, the foreign corporation's president had been found and served in the forum state, but this Court, consistent with the Fifth Circuit's decision in the case at bar, refused to give that factor any "conclusive" effect in determining whether general jurisdiction was established under the continuous and systematic business activity rule. 342 U.S. at 445.

4. The Court Of Appeals' Decision Is In Harmony With This Court's Decision In *Burnham*.

Petitioners' insistence on using this Court's decision in *Burnham v. Superior Court*, 495 U.S. 604 (1990) as a touchstone for this case is, in the words of the Court of Appeals, "puzzling". 966 F.2d at 182. "*Burnham* did not involve a corporation and did not decide any jurisdictional issue pertaining to corporations." *Id.* Moreover, as noted by the Fifth Circuit, *Burnham* dispelled any notion that its analysis was applicable to corporations when it recognized that the "continuous and systematic" contacts rule enunciated in *Perkins* and *Helicopteros* applied *only* to corporations, adding that corporations "have never fitted comfortably in a jurisdictional regime based primarily upon 'de facto power over the defendant's person.' " 495 U.S. at 610 n.1. Indeed, it was precisely this recognition that led this Court in *International Shoe* to cast aside the fictions of "presence" and "consent" when dealing with corporate jurisdictional principles in favor of a "contacts"-based analysis. Accordingly, Petitioners' reliance on *Burnham* is completely misplaced.

CONCLUSION

The Fifth Circuit Court of Appeals' decision does not conflict with any decision of this Court, it does not create any conflict with any other Circuit Court of Appeals, and it does not meet any of the other criteria for certiorari review by this Court. Accordingly, the Petition for Writ of Certiorari to the United States Court of Appeals for the Fifth Circuit should be denied.

Respectfully submitted,

GERALD L. BRACHT
MAYOR, DAY, CALDWELL
& KEETON, L.L.P.
700 Louisiana, Suite 1900
Houston, Texas 77002-2778
(713) 225-7000

HUGH C. GRIFFIN
Counsel of Record
DAVID J. ADAMS
REGINA KWAN PETERSON
LORD, BISSELL & BROOK
115 South LaSalle Street
Chicago, Illinois 60603
(312) 443-0700

Attorneys for Respondent
Learjet Corporation